

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEVIN ALLER,

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

JOHN G. KOELTL, District Judge:

The petitioner submitted the attached letter dated March 31, 2020 seeking home confinement pursuant to the First Step Act. The Government should respond to this application by June 3, 2020. The petitioner may reply by June 17, 2020. Chambers will mail a copy of this order to the pro se petitioner.

SO ORDERED.

Dated: New York, New York
May 19, 2020

/s/ John G. Koeltl
John G. Koeltl
United States District Judge

IN THE UNITED STATES DISTRICT COURT

KEVIN AHER

THE PETITIONER,

VS.

UNITED STATES OF AMERICA

MOTION FOR HOME CONFINEMENT

INTRODUCTION

NOW COMES, KEVIN AHER, HEREINAFTER, THE PETITIONER, A PROSE LITIGANT WHO IS AN INMATE UNDER THE CUSTODY OF THE UNITED STATES OF AMERICA. SPECIFICALLY, THE PETITIONER IS LOCATED AT FEDERAL CORRECTIONAL INSTITUTION, F.C.I. ESTON. THE PETITIONER MOST HUMBLY AND RESPECTFULLY FILES THE PRESENT MOTION UNDER TITLE 18 U.S.C. § 3582(c)(1)(A) OF THE FIRST STEP ACT SUBSECTION (d), LABELED "ANY OTHER REASON." WHICH, BY WELL ESTABLISHED RULE OF STATUTORY CONSTRUCTION, THIS HONORABLE COURT MUST GIVE EFFECT TO EVERY WORD OF A STATUTE WHERE POSSIBLE. ACCARDI V. U.S. ATTY GEN., 634 F.3d 1333 (11th Cir. 2011); SEE ALSO DUNCAN V. WALKER, 533 U.S. 167 (2001).

THE PETITIONER ALLEGES:

(A) THAT THE PRESIDENT OF THE UNITED STATES, DONALD J. TRUMP, SIGNED INTO LAW, HOUSE RESOLUTION BILL 748, ALSO KNOWN AS "THE CARE ACT," MARCH 27th, 2020.

(B) UNDER THE CARE ACT, SECTION 12003 (c)(2) EXCEPTS B.O.P. RULES 18 § 3624 (c)(2), WHICH ALLOWED THE BOP TO PLACE AN INMATE ON HOUSE CONFINEMENT FOR 10% / OR 6 MONTH OF THE REMAINDER OF HIS/HER SENTENCE IN HALFWAY HOUSE OR HOME CONFINEMENT, SEE 18 U.S.C. § 3624 (c)(2);

(C) UNDER THE CARE ACT, HOUSE RESOLUTION BILL, SECTION 12003 (c)(2), NOW EXCEPTS THE FEDERAL BUREAU OF PRISONS RULES NOW, HOME CONFINEMENT IS UNLIMITED AND CAN BE APPLIED TO ANYTHING SHORT OF THE DEATH PENALTY.

(D) UNDER THE CARE ACT, HOUSE RESOLUTION 748, WILLIAM BAR, U.S. ATTORNEY GENERAL, RELEASED A MEMO STATING THAT THE BILL DOES NOT DEFINE TO ANY MEASURE VIOLENT OFFENDERS, LEAVING TO THE B.O.P. THE TASK OF IMPLEMENTING THE GUIDELINES UNDER THOSE PROVISIONS

REASONS FOR GRANTING HOME CONFINEMENT

(A) THE MOST RECENT OUT-BREAK OF COVID-19, WHICH HAS CAUSED ALREADY THOUSANDS OF DEATHS IN THE UNITED STATES. SECOND TO CHINA AND ITALY, THE UNITED STATES EXPECTS THOUSANDS MORE WITHIN ITS TERRITORY TO BECOME INFECTED, AS MANY ARE BEING INFECTED EVERY DAY;

(B) CONGRESS HAS ALREADY WARNED THAT IT IS A MATTER OF TIME FOR THIS DEADLY VIRUS TO COMPLETELY WIPE OUT AMERICA'S PRISONS AND PENITENTIARIES FOR THE FAST SPREAD OF COVID. IT'S SPREAD IS GUARANTEED, THE OUTCOME FOR MANY INMATES IS MOST CERTAINLY DEATH. EVIDENCE OF THIS COMES IN THE FORM OF THE 24 HOUR UPDATES OFFERED BY CNN, FOX NEWS AND EVEN BY THE CDC WHO KEEP ASKING FOR SOCIAL DISTANCING. FOR THE IMPRISONED, SOCIAL DISTANCING IS SIMPLY SOMETHING IMPOSSIBLE TO ACHIEVE, REGARDLESS OF BEING MANDATORY (AS IT WILL BE EXPLAINED BELOW). COVID-19 IS A CLEAR AND PRESENT DANGER. THIS THREAT IS IMMINENT; THE FEDERAL BUREAU OF PRISONS CANNOT PROTECT ME FROM AN INVISIBLE VIRAL SPREAD INMATE DEATHS WILL BE THE RESULT OF THE LACK OF RESPIRATOR MASK, AND A CURE, WHICH FOR THE MOMENT SEEMS DISTANT;

(C) TITLE 18 U.S.C. § 4042, IN RELEVANT PART STATES "THE FEDERAL BUREAU OF PRISONS IS LEGALLY OBLIGATED TO PROVIDE SAFE ENVIRONMENT, INCLUDING QUARTERS." THIS IS NOT THE CASE;

(D) THERE ARE APPROXIMATELY ONE-HUNDRED PLUS (100+) INMATES LIVING VERY CLOSE TO THE OTHER IN EACH QUARTER, WITH INTERCONNECTED AIR VENTILATION, THAT IS, IF ONE GETS SICK, THE ENTIRE UNIT WILL GET SICK. IT IS JUST A MATTER OF TIME;

(E) PRISON STAFF WEAR GLOVES, HOWEVER, THE USE OF THE SAME SET OF GLOVES TO PAT SEARCH MORE THAN ONE INMATE AT A TIME, THIS KIND OF PRACTICE SERVES TO SPREAD GERMS. FCI ESTILL HAS

BEEN ON A MODIFIED, CONTROLLED MOVEMENT. FOR INMATES IN ORDER TO LIMIT THE NUMBER OF INMATES IN A SINGLE AREA, THOUGH, COLDS AND FLU ARE rampant.

(F) THE PETITIONER ALSO STATES THE FOLLOWING, THAT IF HE WERE TO BE SENTENCED TODAY, HIS SENTENCE WOULD BE SUBSTANTIALLY LOWER, AS THERE HAVE BEEN MANY INTERVENING CHANGES IN THE LAW. FIRST, THE PETITIONER WOULD NOT BE A CAREER CRIMINAL UNDER U.S.S.C. 4B1.2, AS HIS PRIOR ASSAULTS ON CONFINED PERSONS, AND ASSAULT ON PEACE OFFICERS WOULD NOT SERVE AS PREDICATED UNDER THE GUIDELINE, UNDER A CATEGORICAL APPROACH, UNDER DESCAMPE, MATHIS, DAVIS AND JOHNSON.

REASONS FOR GRANTING

1 THE PETITIONER IS CURRENTLY 45 YEARS OLD WHO IS A CHRONIC CARE LEVEL 3. THE PETITIONER ALSO HAS BRONCHITIS, ASTHMA AND MENTAL HEALTH CONDITIONS, THAT HE COULDN'T WHEN THE WORLD TRADE CENTER FELL. THE PETITIONER, IS ON NO WORK OUT, LOWER BELT NO RUNNING ANY SPORTS. THE PETITIONER HAS HIGH BLOOD PRESSURE, AND A BAD HEART, ~~ALL~~ ALL ON FILE.

(2) THE PETITIONER IS ENROLLED IN SCHOOL, WHILE HE IS INCARCERATED, MAINTAIN A JOB. AND HELP OUT WHEN EVER NEEDED YOU CAN SEE FROM HIS BOSSSES, THAT FORWARD LETTERS FOR HIS FIRST STEP ACT 404(B). YOU CAN ALSO SEE ALL THE CERTIFICATES HE GOT THAT WAS ALREADY FORWARD TO THE JUDGE.

ADDITIONAL REASONING

THE PETITIONER ADMITS TO THIS HONORABLE COURT THAT UPON ENTERING FEDERAL PRISON, HE WAS VERY ANGRY, AND MOST AT ALL, ENEMY TO HIMSELF. BUT BEYOND THAT, THE PETITIONER, THROUGH OUT HIS LIFE HAS PAVED A WAY OF DESTRUCTION, WITHOUT REMORSE FOR THE MOST PART, AND DIDNT APPLY HIMSELF VERY WELL TO PRODUCTIVITY, AND ON LIMITED OCCASSIONS, CONTRADICTED TO OVER ALL SOCIETY. THERE IS NO DENIAL IN THAT MANNER. THE PETITIONER LIVED HIS LIFE A MILE AT A TIME, AT A VERY VERY YOUNG AGE SORT OF SPEAK, THAT BOY IS LONG GONE!! NOW IN HIS 30S ON SO THE PETITIONER SPENDS HIS BEING A FRIEND TO THE YOUNG YOUTH GROWING UP TELLING THEM THAT NOT THE WAY. THE PETITIONER IS A CHRISTIAN WHO BELIEVES IN GODS AND IS SECOND COMING.

ON RECORDS, THE PETITIONER APOLOGIZES TO HIS CHILDREN MOTHER DAUGHTER, GRAND KIDS, PARENTS, TO PEOPLE WHO ARE ON THE DEATH BEDS I AM FULLY REMORSEFUL FOR THE HURT AND DESTRUCTION IVE COMMITTED TODAY ~~AND~~ EVERYDAY I TRY TO HELP PEOPLE IN ANYTHING I ENCOURAGE YOUNG ADULT MEN TO RETRAIN FROM HARMFUL INFLUENCES, ENCOURAGING THEM TO SEEK A POSITIVE CHANGE THROUGHT. DEVELOPMENT OF POSITIVE CONDUCT AND TO RE-CONNECT WITH

THEIR FAMILIES AND HOW TO BE A BETTER PARENT. TEACHING OTHERS FORMATES HOW TO APPLY FOR RE-ENTRY PROGRAMS AND MAKING PLANS, EVEN SMALL ONES, AND EXPLAINING MY OWN LIFE EXPERIENCES, THINGS A PERSON NEEDS TO KNOW LIKE IDENTIFYING SIMPLE THINGS THE PETITIONER HAS HAD POSITIVE RESPONSES FROM YOUNG ADULT MALES WHEN MENTORING THESE YOUNG FAMILY MEMBERS.

THE PETITIONER AVERS THAT FOR HIS OWN SAFETY, BEING IN PRISON, IS ENDANGERING HIS LIFE WITH THE IMMEDIATE THREAT OF COVID-19. NO BODY KNOWS FOR CERTAIN HOW LONG IT WOULD BE BEFORE DEATH COMES KNOCKING ON THE DOOR. COVID-19 SEES NO AGE, RACE NOR NATIONALITY, NEITHER IF SOMEONE IS FREE OR IMPRISONED, POOR OR RICH, COVID-19 MAKES NO DISCRIMINATION.

WHEREFORE, THE PETITIONER KEVIN ALLER, MOST HUMBLY AND RESPECTFULLY PRAYS FOR HIM TO BE ALLOWED IMMEDIATE HOME CONFINEMENT.

RESPECTFULLY SUBMITTED THIS 31ST DAY OF MARCH, 2020

BY Kevin Allen
KEVIN ALLER

REG: NO 45021-054

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Kevin Allen 45021-054

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Federal Correctional Institution



APR 1 2007

ESTILL SC

Honorable John G. Koeth

U.S. District Judge

Southern District of New York

U.S. Courthouse

500 Pearl Street

New York New York 10007

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